

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

GARY Z. LYON,	)	CASE NO.: 2:08 CV 464
	)	
Plaintiff,	)	JUDGE FROST
	)	
vs.	)	MAJ. JUDGE KING
	)	
YELLOW TRANSPORTATION, INC.,	)	<b><u>DEFENDANT TEAMSTERS</u></b>
et al.,	)	<b><u>LOCAL UNION NO. 413'S</u></b>
	)	<b><u>MOTION FOR SANCTIONS</u></b>
Defendants.	)	

NOW COMES Defendant Teamsters Local Union No. 413 (“Defendant” or “Local 413”), by and through its undersigned counsel, hereby moving this Court pursuant to Federal Rule of Civil Procedure 11, 28 U.S.C. § 1927, and its inherent power as a United States District Court for the Southern District of Ohio, for an order imposing such monetary and other sanctions as may be appropriate against Phillip Harmon, Esq. and his law firm, and Plaintiff Gary Z. Lyon. This motion is made on the following grounds:

1. On May 13, 2008 attorney Phillip L. Harmon, Esq. (OSCR #0033371) and his law firm on behalf of Plaintiff Gary Z. Lyon filed a written Complaint (Doc.2) with jury demand in this Court against Defendants Yellow Transportation, Inc. (“Yellow”) and Teamsters Local Union No. 413 (“Local 413” or the “Union”) which was signed by Mr. Harmon. The Complaint purported to state a Hybrid/Section 301 cause of action against Defendants Yellow and Local 413 predicated on a breach of Local 413’s duty of fair representation toward Plaintiff Lyon, a union member who was laid off from Yellow due to a Change of Operations under the labor agreement between Yellow and the Union. On

account of said Complaint, Local 413 was compelled to answer on June 30, 2008 (Doc. 15).

2. Whereupon, on July 18, 2008, Local 413 served the attached Motion and Notice of Motion to Plaintiff for Sanctions Under Rule 11 and 28 U.S.C. § 1927. The Union argued therein *inter alia*, that said Complaint was frivolous and otherwise impermissible under the Federal Rules of Civil Procedure and by statute because it was presented for an improper purpose, contained basic factual and legal contentions that were unfounded in law or fact and were not likely to ever be well-founded, and which were not reasonably based upon a lack of information and belief.

3. Mr. Harmon and his respective law firm, by or on behalf of his client Gary Z. Lyon and the Plaintiff, have together nevertheless continued to prosecute this action through discovery and dispositive motions, and thereby have continued to violate Fed. R. Civ. P. 11 and 28 U.S.C. § 1927, in that:

- a) Said pleadings and actions have been presented for the improper purpose of harassing Movant, causing unnecessary delay of litigation, or causing needless increase in the cost of litigation, and
- b) As discussed in the attached Memorandum in Support, which is incorporated herein by reference, said pleadings contain basic factual and legal contentions which were not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, and
- c) Said pleadings contain claims and contentions, as specified and summarized below in the attached Memorandum of Law incorporated herein by reference, which did not, and do not have evidentiary support, nor were they likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

d) The factual contentions made by or on behalf of Plaintiff, as summarized below, were not reasonably based on a lack of information or belief.

4. Said offending pleadings have not been withdrawn, even though Local 413 has repeatedly requested dismissal. Local 413's Motion and Notice of Motion was served on Mr. Harmon, his law firm, and Plaintiff on July 18, 2008 which is more than 21 days before the filing of this Motion with the Court.

Accordingly, Defendant Local 413 requests the Court to order an award of its attorneys' fees as sanctions against Mr. Harmon, his law firm and Plaintiff in favor of the Union.

Respectfully submitted,

***FAULKNER, MUSKOVITZ & PHILLIPS, LLP***, by

*s/ D. James Petroff*

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Attorneys for Defendant Teamsters Local 413

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 6<sup>th</sup> day of April 2009, the foregoing  
DEFENDANT TEAMSTERS LOCAL UNION NO. 413'S MOTION FOR  
SANCTIONS was filed electronically using the Court's electronic case filing system.  
Parties may access it there.

s/ D. James Petroff